

MEMORANDUM

SUBJECT: Request for pre-publication authorization on: Recommended Aquatic Life Ambient Water Quality Criteria for Cadmium – 2016 (Tier 3, SAN 5843)

FROM: Elizabeth Southerland, Director, Office of Science and Technology

TO: Joel Beauvais
Deputy Assistant Administrator

PURPOSE

The Office of Science and Technology is requesting authorization to publish to the web a pre-publication edition of the federal register notice and document for Recommended Aquatic Life Ambient Water Quality Criteria for Cadmium – 2016.

DEADLINE

The updated aquatic life criteria for cadmium needs to be published by March 30, 2016, in order to maintain a timeline set by a potential lawsuit settlement agreement with Northwest Environmental Advocates.

OVERVIEW

The EPA is in the process of updating the Agency's 304(a) cadmium aquatic life ambient water quality criteria. These criteria provide scientifically sound recommendations to states for levels that are protective of aquatic communities. States may choose to adopt the 304(a) criteria or other scientifically defensible values in their water quality standards. The cadmium criteria revise acute and chronic freshwater and estuarine/marine values that were last updated in 2001. The updated criteria values are very similar to what they were in 2001. The EPA used the approach it routinely uses in developing aquatic life recommended criteria to develop the criteria, and added new toxicity data representing over 75 additional freshwater species.

The driver for updating the cadmium criteria was a lawsuit brought by Northwest Environmental Advocates following the EPA's 2013 disapproval of Oregon's freshwater acute cadmium criterion. The EPA's disapproval triggered a CWA duty for the EPA to propose a replacement criterion for Oregon. The EPA would intend to use the updated criteria document as the scientific basis for the proposed rule. The agency is currently negotiating a settlement with the litigants in which the EPA would commit to propose cadmium criteria for Oregon by March 31, 2016, and take final rulemaking action by January 16, 2017. The 304(a) criteria being proposed is a basis for the rulemaking to propose criteria for Oregon and, therefore, the document is time sensitive.

Ex. 5 - Deliberative Process

Although the 2016 updated criteria have not changed significantly from 2001, a draft Endangered Species Act analysis prepared by the EPA and shared with Region 10 indicates that the freshwater criteria are expected to provide approximately 95 percent protection for endangered salmonids based on acute effects, a minimal effects level associated with the jeopardy opinion. It is likely, however, that the Services may still question this number as they expected our update to result in more stringent values.

We proposed the criteria for 60 days of public comment December 1, 2015, and need to issue the final criteria at the end of March 2016 so that the 304(a) criteria is available as a basis for the rulemaking to propose criteria for Oregon. The proposed rule-making will be posted on April 1, 2016. The Office of Science and Technology would like to have the criteria posted on the web as a pre-publication March 31, 2016 to ensure that the proposed rule-making can reference the 304(a) criteria. Currently the Federal Register Notice is scheduled for your signature March 24, 2016.

If you need additional information or have questions, please call Elizabeth Behl at (202) 566-0788.